

Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 423. Restrictions on disclosing and obtaining contractor bid or proposal information or source selection information

(a) Prohibition on disclosing procurement information

(1) A person described in paragraph (2) shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. In the case of an employee of a private sector organization assigned to an agency under chapter 37 of title 5, in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment of such employee.

(2) Paragraph (1) applies to any person who—

(A) is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(B) by virtue of that office, employment, or relationship has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information

A person shall not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) Actions required of procurement officers when contacted by offerors regarding non-Federal employment

(1) If an agency official who is participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold contacts or is contacted by a person who is a bidder or offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official shall—

(A) promptly report the contact in writing to the official's supervisor and to the designated agency ethics official (or designee) of the agency in which the official is employed; and

(B)(i) reject the possibility of non-Federal employment; or

(ii) disqualify himself or herself from further personal and substantial participation in that Federal agency procurement until such time as the agency has authorized the official to resume participation in such procurement, in accordance with the requirements of section 208 of title 18 and applicable agency regulations on the grounds that—

(I) the person is no longer a bidder or offeror in that Federal agency procurement; or

(II) all discussions with the bidder or offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Each report required by this subsection shall be retained by the agency for not less than two years following the submission of the report. All such reports shall be made available to the public upon request, except that any part of a report that is exempt from the disclosure requirements of section 552 of title 5 under subsection (b)(1) of such section may be withheld from disclosure to the public.

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in subsection (e) of this section.

(4) A bidder or offeror who engages in employment discussions with an official who is subject to the restrictions of this subsection, knowing that the official has not complied with subparagraph (A) or (B) of paragraph (1), shall be subject to the penalties and administrative actions set forth in subsection (e) of this section.

(d) Prohibition on former official's acceptance of compensation from contractor

(1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(A) served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) personally made for the Federal agency—

(i) a decision to award a contract, sub-contract, modification of a contract or sub-contract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) a decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) a decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) a decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) Nothing in paragraph (1) may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in subparagraph (A), (B), or (C) of such paragraph.

(3) A former official who knowingly accepts compensation in violation of this subsection

shall be subject to penalties and administrative actions as set forth in subsection (e) of this section.

(4) A contractor who provides compensation to a former official knowing that such compensation is accepted by the former official in violation of this subsection shall be subject to penalties and administrative actions as set forth in subsection (e) of this section.

(5) Regulations implementing this subsection shall include procedures for an official or former official of a Federal agency to request advice from the appropriate designated agency ethics official regarding whether the official or former official is or would be precluded by this subsection from accepting compensation from a particular contractor.

(e) Penalties and administrative actions

(1) Criminal penalties

Whoever engages in conduct constituting a violation of subsection (a) or (b) of this section for the purpose of either—

(A) exchanging the information covered by such subsection for anything of value, or

(B) obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract,

shall be imprisoned for not more than 5 years or fined as provided under title 18, or both.

(2) Civil penalties

The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of subsection (a), (b), (c), or (d) of this section. Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative actions

(A) If a Federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of this section, the Federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the Federal agency procurement, if a contract has not yet been awarded.

(ii) Rescission of a contract with respect to which—

(I) the contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

(II) the head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the Government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in chapter 75 of title 5 or other applicable law or regulation.

(B) If a Federal agency rescinds a contract pursuant to subparagraph (A)(ii), the United States is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(C) For purposes of any suspension or debarment proceedings initiated pursuant to subparagraph (A)(iii), engaging in conduct constituting an offense under subsection (a), (b), (c), or (d) of this section affects the present responsibility of a Government contractor or subcontractor.

(f) Definitions

As used in this section:

(1) The term “contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Cost or pricing data (as defined by section 2306a(h) of title 10, with respect to procurements subject to that section, and section 254b(h) of this title, with respect to procurements subject to that section).

(B) Indirect costs and direct labor rates.

(C) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(D) Information marked by the contractor as “contractor bid or proposal information”, in accordance with applicable law or regulation.

(2) The term “source selection information” means any of the following information prepared for use by a Federal agency for the purpose of evaluating a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(A) Bid prices submitted in response to a Federal agency solicitation for sealed bids, or lists of those bid prices before public bid opening.

(B) Proposed costs or prices submitted in response to a Federal agency solicitation, or lists of those proposed costs or prices.

(C) Source selection plans.

(D) Technical evaluation plans.

(E) Technical evaluations of proposals.

(F) Cost or price evaluations of proposals.

(G) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(H) Rankings of bids, proposals, or competitors.

(I) The reports and evaluations of source selection panels, boards, or advisory councils.

(J) Other information marked as “source selection information” based on a case-by-case determination by the head of the agency, his designee, or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

(3) The term “Federal agency” has the meaning provided such term in section 102 of title 40.

(4) The term “Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds.

(5) The term “contracting officer” means a person who, by appointment in accordance with applicable regulations, has the authority to enter into a Federal agency procurement contract on behalf of the Government and to make determinations and findings with respect to such a contract.

(6) The term “protest” means a written objection by an interested party to the award or proposed award of a Federal agency procurement contract, pursuant to subchapter V of chapter 35 of title 31.

(7) The term “official” means the following:

(A) An officer, as defined in section 2104 of title 5.

(B) An employee, as defined in section 2105 of title 5.

(C) A member of the uniformed services, as defined in section 2101(3) of title 5.

(g) Limitation on protests

No person may file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of subsection (a), (b), (c), or (d) of this section, nor may the Comptroller General of the United States consider such an allegation in deciding a protest, unless that person reported to the Federal agency responsible for the procurement, no later than 14 days after the person first discovered the possible violation, the information that the person believed constitutes evidence of the offense.

(h) Savings provisions

This section does not—

(1) restrict the disclosure of information to, or its receipt by, any person or class of persons authorized, in accordance with applicable agency regulations or procedures, to receive that information;

(2) restrict a contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(3) restrict the disclosure or receipt of information relating to a Federal agency procurement after it has been canceled by the Federal agency before contract award unless the Federal agency plans to resume the procurement;

(4) prohibit individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal

information or source selection information does not occur;

(5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency;

(6) authorize the withholding of information from, nor restrict its receipt by, the Comptroller General of the United States in the course of a protest against the award or proposed award of a Federal agency procurement contract; or

(7) limit the applicability of any requirements, sanctions, contract penalties, and remedies established under any other law or regulation.

(Pub. L. 93-400, §27, as added Pub. L. 100-679, §6(a), Nov. 17, 1988, 102 Stat. 4063; amended Pub. L. 101-189, div. A, title VIII, §814(a)-(d)(1), Nov. 29, 1989, 103 Stat. 1495-1498; Pub. L. 101-510, div. A, title XIV, §1484(l)(6), Nov. 5, 1990, 104 Stat. 1720; Pub. L. 102-25, title VII, §705(i), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103-355, title VIII, §8301(e), Oct. 13, 1994, 108 Stat. 3397; Pub. L. 104-106, div. D, title XLIII, §4304(a), Feb. 10, 1996, 110 Stat. 659; Pub. L. 107-347, title II, §209(d)(4), Dec. 17, 2002, 116 Stat. 2930.)

CODIFICATION

“Section 102 of title 40” substituted in subsec. (f)(3) for “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)” on authority of Pub. L. 107-217, §5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

AMENDMENTS

2002—Subsec. (a)(1). Pub. L. 107-347 inserted at end “In the case of an employee of a private sector organization assigned to an agency under chapter 37 of title 5, in addition to the restriction in the preceding sentence, such employee shall not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information during the three-year period after the end of the assignment of such employee.”

1996—Pub. L. 104-106 amended section generally, substituting subssecs. (a) to (h) relating to restrictions on disclosing and obtaining contractor bid or proposal information and source selection information for former subssecs. (a) to (p) relating to procurement integrity.

1994—Subsec. (e)(1)(B). Pub. L. 103-355 inserted “, except in the case of a contract for the procurement of commercial items,” after “certifies in writing to such contracting officer” in introductory provisions.

1991—Subsec. (p)(8). Pub. L. 102-25 substituted “has the meaning given such term by section 109(3) of the Ethics in Government Act of 1978 (5 U.S.C. App.)” for “has the same meaning as the term ‘designated agency official’ in section 209(10) of the Ethics in Government Act of 1978 (92 Stat. 1850; 5 U.S.C. App.)”.

1990—Subsec. (f)(3)(D), (F). Pub. L. 101-510 redesignated subpar. (D), defining term “civil service”, as (F).

1989—Subsecs. (a)(1), (b)(1). Pub. L. 101-189, §814(a)(1)(A), inserted “, except as provided in subsection (c) of this section” before semicolon at end.

Subsec. (c). Pub. L. 101-189, §814(a)(1)(C), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 101-189, §814(a)(1)(B)(ii), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (e)(1)(A)(i), (B)(ii), (2)(A), (3)(A). Pub. L. 101-189, § 814(c)(1)(A)-(D), substituted “(d), or (f)” for “(c), or (e)”.

Subsec. (e)(7)(B)(ii). Pub. L. 101-189, § 814(c)(1)(E), substituted “subsection (o)” for “subsection (m)”.

Subsec. (f). Pub. L. 101-189, § 814(a)(2)(B), substituted “Restrictions resulting from procurement activities of procurement officials” for “Restrictions on Government officials and employees” as heading, and “(1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly—” for “No Government official or employee, civilian, or military, who has participated personally and substantially in the conduct of any Federal agency procurement or who has personally reviewed and approved the award, modification, or extension of any contract for such procurement shall—”.

Pub. L. 101-189, § 814(a)(2)(A), redesignated pars. (1) and (2) as subpars. (A) and (B), respectively.

Pub. L. 101-189, § 814(a)(1)(B)(ii), redesignated subsec. (e) as (f). Former subsec. (f) redesignated (g).

Subsec. (f)(2). Pub. L. 101-189, § 814(a)(2)(C), added par. (2).

Subsec. (f)(3). Pub. L. 101-189, § 814(d)(1), added par. (3).

Subsec. (g). Pub. L. 101-189, § 814(a)(1)(B)(ii), redesignated subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 101-189, § 814(c)(2), substituted “subsection (o)” for “subsection (m)”.

Subsec. (h). Pub. L. 101-189, § 814(a)(1)(B)(ii), redesignated subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 101-189, § 814(c)(3)(A), substituted “subsection (e)” for “subsection (d)”.

Subsec. (h)(2). Pub. L. 101-189, § 814(c)(3)(B), substituted “(b) or (d)” for “(b) or (c)”.

Subsec. (h)(3). Pub. L. 101-189, § 814(c)(3)(C), substituted “(i) and (j)” for “(h) and (i)”.

Subsec. (i). Pub. L. 101-189, § 814(c)(4), substituted “(d), or (f)” for “(c), or (e)”.

Pub. L. 101-189, § 814(a)(1)(B)(ii), redesignated subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 101-189, § 814(a)(1)(B)(ii), redesignated subsec. (i) as (j). Former subsec. (j) redesignated (l).

Subsec. (j)(1). Pub. L. 101-189, § 814(c)(5), substituted “subsection (p)” for “subsection (n)” and “subsection (o)” for “subsection (m)”.

Subsec. (k). Pub. L. 101-189, § 814(a)(3), added subsec. (k). Former subsec. (k) redesignated (m).

Subsec. (l). Pub. L. 101-189, § 814(a)(1)(B)(i), redesignated subsec. (j) as (l). Former subsec. (l) redesignated (n).

Subsec. (l)(1). Pub. L. 101-189, § 814(c)(6)(A), substituted “subsections (b), (c), and (e)” for “subsection (b)”.

Subsec. (l)(2). Pub. L. 101-189, § 814(c)(6)(B), substituted “subsections (b), (c), and (e)” for “subsection (b)” and “(d), or (f)” for “(c), or (e)”.

Subsecs. (m), (n). Pub. L. 101-189, § 814(a)(1)(B)(i), redesignated subsecs. (k) and (l) as (m) and (n), respectively. Former subsecs. (m) and (n) redesignated (o) and (p), respectively.

Subsec. (o). Pub. L. 101-189, § 814(a)(4), amended subsec. (o) generally. Prior to amendment, subsec. (o) read as follows: “Government-wide regulations and guidelines deemed appropriate to carry out this section shall be issued in the Federal Acquisition Regulation within 180 days after November 17, 1988.”

Pub. L. 101-189, § 814(a)(1)(B)(i), redesignated subsec. (m) as (o).

Subsec. (p). Pub. L. 101-189, § 814(a)(1)(B)(i), redesignated subsec. (n) as (p).

Subsec. (p)(1). Pub. L. 101-189, § 814(b)(1), substituted “on the earliest specific date, as determined under implementing regulations, on which an authorized official orders or requests an action described in clauses (i)-(viii) of paragraph (3)(A),” for “with the develop-

ment, preparation, and issuance of a procurement solicitation.”.

Subsec. (p)(3)(A). Pub. L. 101-189, § 814(b)(2), added subpar. (A) and struck out former subpar. (A) which read as follows: “The term ‘procurement official’ means any civilian or military official or employee of an agency who has participated personally and substantially in the conduct of the agency procurement concerned, including all officials and employees who are responsible for reviewing or approving the procurement, as further defined by applicable implementing regulations.”

Subsec. (p)(8). Pub. L. 101-189, § 814(b)(3), added par. (8).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-347 effective 120 days after Dec. 17, 2002, see section 402(a) of Pub. L. 107-347, set out as an Effective Date note under section 3601 of Title 44, Public Printing and Documents.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE

Section 6(b) of Pub. L. 100-679, as amended by Pub. L. 101-28, § 1, May 15, 1989, 103 Stat. 57, provided that: “The amendment made by subsection (a) [enacting this section] shall take effect July 16, 1989.”

REGULATIONS

Section 814(e) of Pub. L. 101-189 provided that: “Not later than 90 days after the date of the enactment of this section [Nov. 29, 1989], regulations implementing the amendments made by this section to the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) shall be issued in accordance with sections 6 and 25 of such Act (41 U.S.C. 405, 421), after coordination with the Director of the Office of Government Ethics.”

CLARIFICATION OF FREQUENCY OF CERTIFICATION BY EMPLOYEES AND CONTRACTORS

Section 815(b) of Pub. L. 101-510 provided that: “Not later than 30 days after the date of the enactment of this Act [Nov. 5, 1990], the regulations implementing section 27(e)(1)(B) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(e)(1)(B)) shall be revised to ensure that a contractor is required to obtain from each officer, employee, agent, representative, and consultant of the contractor only one certification (as described in clauses (i) and (ii) of that section) during the person’s employment or association with the contractor and that such certification shall be made at the earliest possible date after the person begins his or her employment or association with the contractor.”

SUSPENSION OF EFFECT OF SECTION

Section 815(a)(1) of Pub. L. 101-510 provided that subsection (f) of this section shall have no force or effect during the period beginning on Dec. 1, 1990, and ending on May 31, 1991.

Pub. L. 101-194, title V, § 507(1), Nov. 30, 1989, 103 Stat. 1759, provided that the provisions of this section shall have no force or effect during the period beginning Dec. 1, 1989, and ending one year after such date.

§ 424. Repealed. Pub. L. 103-355, title VIII, § 8303(b), Oct. 13, 1994, 108 Stat. 3398

Section, Pub. L. 93-400, § 28, as added Pub. L. 100-679, § 9, Nov. 17, 1988, 102 Stat. 4069, related to establishment